IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 976 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMANT SHANATBHAI CHAUHAN

Versus

R D MANKAD

Appearance:

MR ANIL S DAVE for Petitioner

Mr. H.L. Jani, APP for respondent no.3-State.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/12/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. A.S. Dave for the petitioner and learned A.P.P. Mr. H.L. Jani for the respondent no.3-State.

1. The petitioner has challenged the externment order dated 31-7-2000 passed by the respondent no.1 against the petitioner in exercise of powers conferred under Sec.56(b) of the Bombay Police Act, 1951 ("the Act" for short), whereby the petitioner is externed for a period of two years from the area of the City of Ahmedabad and the limits falling under the Commissioner of Police as well as from the contiguous area of District Ahmedabad, Gandhinagar, Kheda and Mahesana.

The petitioner has also challenged the order of the appellate authority dated 4-11-2000 passed by the Deputy Secretary, Home Department, State of Gujarat, under Section 60 of the Act whereby the appeal of the present petitioner challenging the impugned order of externment has been rejected.

2. The Asstt. Commissioner of Police, Ahmedabad City "E" Division, served notice on the petitioner under Section 59 of the Act to show cause why the petitioner should not be externed from the area specified in the notice as allegations were received against the petitioner to the effect that the petitioner has been collecting installments from the traders in the area of Subash Bridge, Keshavnagar and the nearby areas. That the petitioner has been purchasing articles from the traders in the locality without making any payment and when the traders demanded the dues in respect of the articles purchased by the petitioner, the petitioner used to threaten the traders of dire consequences. It is also alleged against the petitioner that he has been using weapon like knife, giving threats to the passersby and extorting money, and thereby causing violence in the area comprised within Sabarmati Police Station. That vide CR no.3142/99 the offences made punishable under Secs.294(B), 506(1) read with Secs.114 and 135(1) of the Act; that vide CR no.3316/99 offences made punishable under Secs.506(1), 294(B) and 504, IPC and vide CR no.188/99 offences made punishable under Secs.186, 504,294(B) read with Sec.114, IPC have been registered against the petitioner and are pending.

3. The petitioner has contended that before he could send the reply to the said show cause notice he was detained under PASA on 18-11-1999 and was committed to the District Jail, Bhuj. That the petitioner challenged the validity of the said detention order under PASA and the High Court of Gujarat vide order dated 24-4-2000 quashed and set aside the said order of PASA and released the petitioner. That thereafter, the petitioner filed reply to the show cause notice on 25-7-2000 and also

annexed the copy of the judgment of the High Court of Gujarat quashing the order of PASA passed against the petitioner. It is contended by the petitioner that thereafter no opportunity was given to the petitioner to lead any evidence and the proceedings were concluded and the externment order impugned in the petition is passed on 31-7-2000.

4. Being aggrieved and dissatisfied by the said order, the petitioner preferred appeal under Sec.60 of the Act to the State Government. However, vide order dated 4-11-200, the Deputy Secretary, Home Department, State of Gujarat rejected the appeal, and as such, the present petition is filed.

5. Learned Advocate Mr. A.S. Dave submitted at the Bar that the impugned order of externment is bad in law on account of non application of mind, in asmuch as despite producing a copy of judgment quashing the order of PASA of the High Court of Gujarat alongwith reply to show cause notice, the concerned authority has not considered the same nor has referred to and relied on in the impugned order.

To support the said submission reliance is placed on the observation made by this Court in the matter of BALVANTSINGH @ NANIO KALYANSINGH VS. DEPUTY COMMISSIONER OF POLICE, VADODARA, 1999(1) G.L.H. p.207 Head Note:C.

6. Learned Advocate Shri Dave further submitted that the appellate authority has also erred by not considering the contention of the said PASA order though specifically raised and has mechanically passed the order of rejection of his appeal.

7. It would be pertinent to note that apart from non application of mind in not considering the order of PASA passed against the petitioner and the judgment rendered by the High Court quashing the said order, the crux of the matter would remain that after the service on issuance of show cause notice if the petitioner was detained under PASA, there could not be said to be any need for further prosecuting the proceedings under Sec.56(b) of the Act, and thereby, on that count non application of mind is writ at large in the order, and thereby, the order cannot be said to be just, proper or reasonable and deserves to be quashed and set aside. The appellate authority also does not appear to have considered the said aspect and has failed to exercise the appellate powers which suggests that the order of the appellate authority is passed mechanically, and

therefore, that order also cannot be sustained in law.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised and canvassed at the Bar.

9. As a result of the foregoing discussion, the petition is allowed. The impugned order of externment dated 31-7-2000 passed by the respondent no.1 in Externment Case no.219/2000 against the petitioner as well as the appellate order dated 4-11-2000 passed by the Deputy Secretary, Home Department rejecting the appeal of the petitioner are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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